IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2040 OF 2006
IN
SUIT NO. 1808 OF 2006

M/s. Ravindra Silk Factory
& Anr. ..Plaintiffs

versus

Smt. Shakila Ansari & Anr. ..Defendants

Mr. Avinash Joshi i/b. Mr. Piyush Shah for the Plaintiffs.

Mr. S. K. Dubey for the Defendant Nos. 1 and 2.

CORAM : S. J. VAZIFDAR, J.

DATE : 11TH SEPTEMBER, 2007

P.C.

1. The suit is filed for an order and decree directing the Defendants to hand over possession of the suit property.

2. The Plaintiffs claim to be the owner of the suit property, viz. Survey No. 51 Hissa No. 15 (Part) and Survey No. 9 Hissa No.1 (Part) under a Conveyance dated 27.4.1973.

3. The Plaintiffs Conveyance has not been challenged. In other words, there is no dispute that the Plaintiffs are the owners of the suit property.

4. The plaintiffs have earlier filed a suit in the Bombay City Civil Court being Suit No. 136 of 2006 for injunction. In the Affidavit in Reply, the Defendants expressly stated that they were not concerned with the suit property and that they claim ownership only of Survey No.8 Hissa No.4. In view of this statement, the suit was withdrawn. The suit, it must be noted, was filed only on an apprehension of encroachment.

5. However, thereafter, according to the Plaintiffs, the Defendants encroached upon the suit property. By an Order dated 13.7.2006 in the present Notice of Motion, the learned Judge directed the DILR to survey and demarcate the suit property and to submit a report within four weeks.

6. The DILR has submitted the report dated 22.12.2006. It is expressly stated in the report

that the measurement of the premises as shown by the Plaintiffs and the Defendants was carried out through plane table and that the measurements reveal that the disputed / suit land forms a part of Survey No. 51 Hissa No.15 (Part) and Survey No. 9 Hissa No.1 (Part). In other words, the finding of the DILR is that the land on which the Defendants have encroached belongs to the Plaintiffs.

7. There is no dispute on behalf of the Defendants that this is the effect of the said report. It was however contended that the report was incorrect as it failed to mention the area in occupation of the Plaintiffs. I am unable to agree. Merely because the area is not mentioned would not render the report incorrect. The Plaintiff admittedly is also the owner of the adjoining lands. Thus even if the exact area in possession of the Plaintiffs was mentioned, it would not be conclusive of the matter.

8. It was then submitted that the report of the DILR is contrary to an earlier report also prepared by the DILR dated 20.2.2004. This report was prepared pursuant to the orders passed in Suit No.

744 of 2003 filed by a third party against the Defendants.

9. It does not appear that the two reports dated 20.2.2004 and 22.12.2006 are contrary to each other. The written report certainly does not indicate any contradiction. It was however submitted that the plan annexed to the report dated 20.2.2004 indicated that the disputed area falls within Survey No.8 Hissa No.4. It is difficult to accept the submission. According to the learned counsel appearing on behalf of the Defendants, the portion shown in hatched lines is the disputed land in the present suit. It is however pertinent to note that the hatched portion does not adjoin any of the suit properties. It adjoins another property.

10. It will be open to the Defendants to establish either through these reports at the trial or through a fresh report whether in fact there is any contradiction between the two reports.

11. It is however necessary to protect the interest of both the parties during the pendency of the suit. In the circumstances, the following order

is passed:

ORDER

. The Court Receiver, High court, Bombay, is appointed as a Receiver of the suit property with all powers under Order XL Rule 1 of the Civil Procedure Code. Till the Court Receiver takes possession, there shall be an injunction in terms of prayer (c).

. The Court Receiver shall appoint any party as his agent on usual terms and conditions and by following the usual procedure including inviting bids. The parties are at liberty to apply for the agency of the Court Receiver. If either of the parties is appointed as an agent of the Court Receiver they shall be liable to pay royalty but shall not be required to furnish security.

. Operation of this order in so far as it relates to the appointment of the Court Receiver, is stayed for a period of four weeks from today.